

**Testimony of Daniel D. Chu, Chair
Civilian Complaint Review Board
Before Public Safety Committee
of the New York City Council**

March 15, 2012

Chair Vallone, members of the Public Safety Committee, I am Daniel D. Chu, the Chairperson of the Civilian Complaint Review Board (CCRB). With me today is the agency's Executive Director, Joan M. Thompson, and other members of our executive and senior staff. Ms. Thompson and I will be available to answer your questions at the conclusion of my testimony.

I will begin by outlining the broad picture of what we do, our budget resources, and agency data. The CCRB is an agency that investigates and mediates police misconduct complaints involving excessive force, abuse of authority, discourtesy, and use of offensive language. It now prosecutes with the Police Department, through the lead prosecutor and second seating programs, a portion of substantiated cases in which the Department pursues discipline. We are pleased to report that the Administrative Prosecution Unit ("APU") pilot program is now "baselined" into the budget and is a permanent agency program. Finally, the Board also conducts public outreach as well as public reporting on the information we gather.

At present, 82% of the CCRB staff consists of investigators and attorneys assigned to the core mission of resolving complaints. Members of the board meet regularly to determine the outcome of an investigation. In 2011, the board reviewed 6,109 cases, interviewed approximately 6,000 officers and 5,000 civilians, issued 1,700 subpoenas and collected thousands of documents

pertaining to our investigations. It also forwarded 160 substantiated cases against 213 officers for prosecution.

Budget Reductions and Hiring Restrictions

Through budget reductions, the CCRB lost 24% of its authorized headcount in recent years, from 192 positions in fiscal 2008 to 146 positions in fiscal 2013. The 2013 budget now stands at \$9,750,143, which is approximately 20% lower than its peak budget of \$12 million in fiscal 2008.

Although we have just received authorization to hire 20 investigators, the hiring restrictions enacted since September 2010 have had an adverse impact on the agency's operations. In particular, the vacancy rate has been over 10% since the start of fiscal 2012. At present, the authorized headcount for fiscal 2012 is 142 positions but we have an actual headcount of 113, a 20% vacancy rate. Of the 29 vacancies, 27 vacancies are in the Investigations Division and two are in the APU. The authorization to hire both investigators and members of the APU staff will reduce our vacancy rate to 5%. However, given our normal annual attrition rate of over 20%, we are concerned that the vacancy rate could increase again as we lose investigators during the spring and summer and do not have ability to replace them.

The lack of adequate funding and the hiring restrictions have had a substantial negative effect on two critical areas, namely, the APU and the Investigations Division. As I noted earlier, the Preliminary 2013 budget includes permanent funding for the APU. However, it only supports two of the four positions that were originally appropriated in 2011 when the APU pilot program was announced.

The reductions in funding and actual staffing have also affected our investigative mission as investigative dockets have increased. At a time in which the agency is under heightened scrutiny for its role in reviewing highly publicized police misconduct complaints and for its new prosecutorial role, the main obstacle we have been facing is the gap between authorized headcount and actual headcount. Our hardworking staff is working beyond its capacity to deal with the constant influx of cases. An investigator closes on average, 65 cases per year. To close as many cases as we currently receive, we would need 94 line investigators, which is more than our current authorized headcount of 88 in fiscal 2012 and 92 in fiscal 2013. We currently have 61 line investigators on staff.

The effect of the hiring restrictions is already noticeable in our fiscal 2012 performance. The average number of line investigators has decreased by 28%, from 85 in July 2011 to 61 in February 2012. The high vacancy rate has resulted in a 26% increase in the open docket of the Investigations Division, from 1,551 cases in July 2011 to 1,952 cases at the end of February 2012. The individual docket of an investigator has increased by 56%.

The increase in the open docket has resulted in an increase in the average number of days it takes the agency to investigate a full investigation. The average number of days is now 357, which is 20 days longer than at the end of fiscal 2011. As a result, the percentage of substantiated cases referred to the Police Department for discipline that are 15 months or older has increased from 14% to 21%, The Statute of Limitations is 18 months.

A higher open docket and longer completion times have begun to adversely affect fiscal 2011 performance levels and are resulting in a drastic deterioration of the CCRB's critical performance indicators in fiscal 2012. The concern of the Board has been that the strain on the remaining staff may lead

more investigators to leave the agency and further exacerbate our already depleted staffing level. Also, investigative delays may make the prosecution of police officers who commit misconduct ever more difficult because of the time constraints associated with our investigations. More importantly, our presence in the Police Department's trial room through the APU could be compromised by our inability to staff the agency to authorized levels.

I now introduce two modest requests for funding for fiscal 2013. We are requesting funds for two positions in the APU and six investigative positions.

Funding Request for Two Positions for the Administrative Prosecution Unit

In November 2011, the Administration appropriated permanent funding for the APU, which runs our lead prosecutor and second seating programs. Initially, the funding for the pilot APU program was set to expire on December 2011. The current 2013 budget provides funds for just two positions, a lead attorney and an investigator. We have recently received approval to hire for those positions and we are in the process of completing candidate interviews. An assistant prosecutor and a clerical position were not funded.

We are requesting funds for these two additional positions because the benefits of the program are substantial. We will soon release a qualitative assessment with the Police Department in which we will talk about the lessons learned by both agencies. From July 2010, our attorneys (through either the first or second seating program) have participated actively in the trial process as we have moved from observers to participants. Our APU attorney has been the lead prosecutor on three trials and we have prosecuted together with the Police Department an additional eight trials in which our lawyers second seated the trial. Of the 15 officers prosecuted in these eleven trials, ten officers were found guilty

after trial, one officer pleaded guilty at trial, two officers were found not guilty and decisions are pending in the cases against those two officers.

The effects of the cooperation are evident from the Police Department disposition of CCRB substantiated cases in 2011. The discipline rate reached a historical high, 81% of officers. With the assistance of CCRB attorneys and better cooperation between the two agencies, the Department guilty-after-trial rate rose to 59%. This is a historical high for CCRB substantiated cases. Finally, the Department went to trial or negotiated a guilty plea with an officer in 13% of all disciplinary cases. This was the highest rate since 2006.

Funding request for Six Investigative Positions

The hiring restrictions have eroded recent productivity gains attained in fiscal 2011. Also, with fewer investigators and higher caseloads, our ability to provide services to the public has suffered. For instance, we are able to conduct fewer field visits and must limit after hour contacts with complainants and witnesses. More importantly, we are having difficulty keeping pace with complaint filings at current complaint activity levels.

We are requesting the addition of six investigative positions to our authorized headcount for two important reasons. First, to close as many cases as we currently receive (a range from 6,000 to 6,200); we need 94 line investigators on staff. The 2013 budget has a current authorized headcount of 92 investigative positions. The addition of six investigators will help us close the projected gap between cases received and cases closed and restore some of the performance levels that were lost as a result of the high vacancy rate.

Second, and equally important, the work of our investigators makes possible the identification of trends that raise concern about Departmental policies, procedures and training. Thus, for instance, our recommendation to the Police Department concerning a pattern of improper stops in New York City Housing Authority developments was made possible through having our staff spend numerous hours reviewing hundreds of cases in addition to their daily investigative responsibilities. At that time, we had 14 more positions than in fiscal 2012. With the diminished resources we now have, a similar task would be more difficult to perform. At present, we do not have the resources to assign investigators to the analysis of trends emerging across our cases.

In closing, we are seeking your support to keep the APU program fully funded and to restore the investigative positions I have just described. The board respectfully requests that the Council restore to the CCRB's fiscal 2013 budget that portion of the APU budget not included in the Preliminary Budget. Specifically, we request funding for two additional positions for the APU. The amount of restoration for the APU we seek is \$135,000. In addition, we also request that the Council restore to the CCRB's fiscal 2013 budget funding for six investigative positions. The amount of restoration for the Investigations Division we seek is \$295,000. The total amount of restoration we seek is \$430,000.

Thank you for your time and continued support. Ms. Thompson and I will be happy to answer any questions you may have.